IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.5439 OF 2005

The Maharashtra Federation)
of Principal's Association of)
Non-Government Colleges, having)
its office at Marathawada Mitra)
Mandal College of Commerce,)
Near Deccan Gymkhana, Pune,)
through its President, Nandkumar)
Shrirangrao Nikam, Age 50)
years Occupation Service,)
R/at, E-29,) Shriramnagar,Near)
Life line Hospital,)
Aundh, Pune.)..PETITIONERS

Versus

1.The State of Maharashtra)
through Secretary,)
Department of Higher &)
Technical Education,Mantralaya)
Mumbai-32)
2.The Director of Education,)
Higher Education, Maharashtra)

State, Central Building,Pune-1)

3.The Joint Director, Higher)
Education, Amaravati Region,)
Govt. Vidharba Mahavidyalaya)
Campus, Amaravati-444 604.)

4.The Joint Director, Higher)
Education, Old Moris College)
Building, Nagpur.)

5.The Joint Director,Higher)
Education,)

6.The Joint Director,Higher)
Education,Jalgaon Region,)
Ramdas Colony, Julla Peth,)
Jalgaon-425 001.)

7.The Joint Director,Higher)
Education, Pune Region,)
Central Building, Pune-1.)

8.The Joint Director,Higher)
Education, Mumbai Region,)
Elphinston Campus, In front)
of Metro Cinema Theatre,)
Dhobi Talav, Mahapalika Marg,)
Mumbai-400 001.)

9.The Joint Director,Higher)
Education, Nanded Region,)
Tilaknagar, Nanded.)

10.The Joint Director,Higher)
Education, Kolhapur Region,)
Rajaram College,Kolhapur.)..RESPONDENTS

Mr.Vankatesh A. Shastry, for the Petitioners

Mrs. M.P. Thakur, AGP for Respondents.

CORAM:F.I. REBELLO &
MRS.R.S.DALVI, JJ.
DATE : 8th December, 2005

ORAL JUDGMENT:

. Petitioner is an Apex Association comprising of all the member associations of Principals and Non-Government Colleges within the region of respective universities in the State of Maharashtra and is registered under the provisions of the Societies Registration Act 1894. By the present petition the petitioners are challenging the action of the respondents in the matter of interpretation of Government Circular dated 1st February, 1996. The petitioners contend that

because of the misinterpretation the petitioners members have been disallowed rent free accommodation plus 10% additional house rent allowance admissible in lieu of rent free accommodation/quarters. The Respondents have also issued directions to initiate action for recovering the payment received by the Principals with effect from 1st April, 1988. It is set out that this action is unjust and unreasonable.

. The petitioners contend that their service conditions are governed by the conditions laid down under the provisions of the Maharashatra Universities Act, Ordinances, Statues and the Resolutions and decisions of the Government of Maharashtra issued from time to time keeping in line with the Directions of University Grants Commission. The Government Resolution of 13th December, 1962 as amended by Government Resolution dated 8th January, 1964 prescribed Rules regarding payment of grants to non-Government Colleges. It prescribed that the rent charged on account of residential quarters of the Principal shall be admissible for grants. Reference is then made to resolution dated 21st April, 1972 and the subsequent circular of 3rd October, 1973. It is

not necessary to advert to all the other averments, except to what is being hereinafter adverted to.

. On 1st February, 1996 the Government issued a G.R., para.3 of which is relevant and may be reproduced:-

> "The question of admissibility of HRA to those principals to whom the residential accommodation has not been provided by their Managements/Societies was under consideration of the Government for some time. Now it is hereby directed that the provisions included in GR., Finance Department, No.VPR-1287/643/Seva-10 dated 25th April, 1988 and GR., Finance Department, No.GBB-1090/C.No.10/Seva-5 dated 5th February, 1990 together with the modifications introduced from time to time shall also be applicable to the principals included in above paragraph 1 from 1st April, 1988."

. The Government had passed a resolution dated 25th April, 1988. That resolution amongst others sets out, that the question of revising the

rates of Compensatory Local Allowance and House Rent Allowance sanctioned under the Government Resolution cited therein, as amended from time to time, was under consideration of Government for some time past. It is further set out that the Government was pleased to direct that the rates of Compensatory Local Allowance and House Rent Allowance admissible to State Government employees should be revised with effect from 1st April, 1988 as shown in the table. Para.5 of the Resolution reads as under:-

> "According to the order cited at (ii) above, Government Servants, who are eligible for rent-free quarters as a condition of service and to whom quarters are not provided are eligible to claim House Rent Allowance in lieu of rent-free quarters. Such Government servants will be eligible to draw House Rent Allowance in lieu of rent-free quarters on the basis of revised rates of house rent allowance plus 10 per cent of their existing pay and compensatory local allowance, subject to fulfilment of conditions prescribed for claiming house rent allowance, in lieu of

rent-free quarters."

3. It would thus be clear from this G.R. that the Government Servants who were not allotted rent free quarters were eligible to draw house rent allowance plus 10% of the existing pay and compensatory local allowance. The Government thereafter on 5th February, 1990 issued another Resolution. This Resolution became effective from 1st October, 1990. By this resolution the house rent allowance was made similar as to Central Government Employees and from the date mentioned in the table which ranged from 1st January, 1990 to 10th October, 1990. Clause 5 of the G.R. as in the earlier G.R., also provided that Government servants would be eligible to draw House Rent Allowance in lieu of rent free quarters on the basis of revised rates of house rent allowance plus 10 per cent of their existing pay i.e. pay in the unrevised scale and compensatory local allowance, subject to fulfilment of conditions prescribed for claiming house rent allowances, in lieu of rent-free quarters.

4. As may be noted, the Government G.R. dated 1st February, 1996, G.R. dated 25th April, 1988

and G.R. dated 5th February, 1990 were made applicable to the College Principals from 1st April, 1988. The method of calculating was set out in para.4.

5. We may gainfully refer to paragraph 8 of Government Resolution dated 25th April, 1988, which reads as follows:-

> "Government is also pleased to direct that these orders should also be made applicable to the teaching and non-teaching staff drawing pay in the U.G.C. scales of pay. Since these persons have not been granted ad hoc increase of 20 per cent of the basic pay, the same should not be taken into account while computing the amount of Compensatory Local Allowance and House Rent Allowance."

6. By the Government Resolution of 5th February, 1990 the Government agreed that the house rent allowance would be paid on the lines of Central Government rates to employees of the State Government, Zilla Parishads and Government aided institutions who are entitled for the house rent

allowance as per existing Government orders in terms of what is set out in para.2 of that order. In para.5 in the matter of house rent allowance it was provided as under:-

> "According to the orders cited at (ii) above, Government servants, who are eligible for rent-free quarters as a condition of service and to whom quarters are not provided are eligible to claim House Rent Allowance in lieu of rent-free quarters. Such Government servants will be eligible to draw House Rent Allowance in lieu of rent-free quarters on the basis of revised rates of house rent allowance plus 10 percent of their existing pay i.e. pay in the unrevised scale and compensatory local allowance, subject to fulfilment of conditions prescribed for claiming house rent allowance, in lieu of rent-free quarters."

. Para.8 of the said G.R. provides as under:-

> Government is also pleased to direct that

> these orders should also be made applicable to the teaching and non-teaching staff drawing pay in the U.G.C. scales of pay."

The next G.R. which we may advert to is the G.R. of 1st February, 1996. Para.3 of the said G.R. reads as under:-

> "The question of admissibility of HRA to those principals to whom the residential accommodation has not been provided by their Managements/Societies was under consideration of the Government for some time. Now it is hereby directed that the provisions included in GR., Finance Department, No.VPR-1287/643/Seva-10 dated 25th April, 1988 and GR., Finance Department No.GBB-1090/C.No.10/Seva-5 dated 5th February, 1990 together with the modifications introduced from time to time shall also be applicable to the principals included in above paragraph 1 from 1st April, 1988."

For the sake of consideration we may also reproduce paragraph 5:-

"The Director of Higher Education shall reopen all the cases in which Notional Rent has been paid as per provisions mentioned in para.1 after 1st April, 1988 and recover the excess amount paid within a period of 24 months. And in no case Notional Rent as per GR., Education, Em, and Youth Services Department, No.NGC-1279/15796/XXV dated 3rd October, 1979 shall be paid after 1st January, 1996."

7. In reply to the petition Shri A.C.Savant, Administrative Officer has filed an affidavit. In the affidavit it is pointed out that as per guidelines of the University Grants Commission, Principals of the affiliated Colleges are required to stay in the campus and for this purpose they are entitled for rent free quarters. It is further pointed out that the management of the Colleges are entitled for compensation for providing for such rent free quarters to the principals as per the guidelines prescribed by the Government for payment of maintenance. Where such quarters are not provided by the Management, the principals can stay at the residence they have hired or owned. They

are entitled for House Rent Allowance as per the classification of Cities plus amount equal to license fee which is chargeable to the government servant provided Government quarters as per his status i.e. pay scale, grade and area of accommodation admissible. The affidavit then goes on to state as under:-

> "I say that the petitioner Principals are entitled to House Rent Allowance as per their pay slabs in addition to it they are entitled for the amount of Rs.460/- or Rs.700/- as per the admissible carpet area they are entitled as per their pay scales."

In other words it has been accepted that the principals are entitled for HRA as per pay slabs in addition to it they are entitled to an amount of Rs.460/- or Rs.700/- as per admissible carpet area. Therefore, there is no dispute as to the admissibility of HRA as per slabs and in addition to amount of Rs.460/- or Rs.700/-.

8. The reliefs as sought for by the petitioners in the petition are as under:-

a) This Honourable High Court may be pleased to issue a writ of mandamus or any suitable writ, order or direction directing respondents to continue the entitlement of 10% additional H.R.A. in lieu of rent free quarter to the Principals of non-Government affiliated colleges where rent free quarter is not made available.

b) This Honourable Court may be pleased to issue a writ of mandamus or any suitable writ, order or direction quashing and setting aside the decision of respondents 1 to 10 in disallowing the entitlement of Principal's of non-Government affiliated colleges for 10% additional HRA in lieu of rent free quarter and to effect recovery.

c)This Honourable High Court may be pleased to issue a writ of mandamus or any suitable writ, order or direction directing the concerned Respondents to forthwith repay the amount recovered/deducted/not paid from the retirement benefits/pay/arrears of pay of the Principals.

. From the above what is clear is that the dispute is regarding 10% additional HRA in lieu of rent free quarters to the Principals of affiliated colleges.

9. In the petition the petitioners have averred that benefit of 10% additional HRA was granted to the principals of non-affiliated colleges in view of the entitlement of rent free quarters without any objection. Over the period of more than 15 years, the benefit has been continued in the light of the entitlement of the principals for rent free quarter and as requirement of service conditions. It is pointed out that the respondents are seeking to rely on Government Circular dated 1st February, 1996. It is pointed out that the interpretation does not lead to the conclusion that the benefit of 10% additional HRA is withdrawn in the case of principles of non-affiliated Colleges.

10. The question, therefore, is whether the respondents were entitled to withdraw the 10% additional HRA in lieu of rent free quarters as being not admissible to the Principals. We have earlier referred to the G.R. of 1st February, 1996 which has made reference to paras.3 and 5 of the

G.R. Para.3 has made it clear that the G.Rs. of 25th April, 1988 and 5th February, 1990 together with modification issued from time to time shall be applicable to the Principals in para.1 from 1st April, 1988. We have also noted that in terms of G.R. of 3rd October, 1973 which pertained to payment of HRA to teaching and non-teaching staff. Para.4 thereof specifically provided that HRA would be admissible at the rates approved by the Regulations of the Universities. It was further provided that in the event HRA paid was less than that received in terms of the Regulation of the University the formula of paying HRA would be as follows:-

(i)Places where HRA is or not admissible.	The actual rent paid 10% of pay whichever is less
(ii) Places where HRA allowance is admissible	The actual rent paid or 10% of pay plus the maximum amount of HRA that would be admissible to the Principals as per this Directorate Circular dated 22-2/15-03- -1978 as amended from time to time, whichever is less.

By the Resolution of 15th March, 1980, the pattern of payment of HRA to Government employees was revised. In case of employees drawing pay

exceeding Rs.750/- per month the actual rent paid or 10% of pay plus the amount of HRA admissible under table II of Government Resolution dated 17th April, 1978 as amended from time to time whichever is less. HRA thereafter was revised by Government Resolution dated 25th April, 1988 and this was also made applicable to teaching and non-teaching staff drawing in UGC scales. We have already quoted paragraphs 5 and 8 of the G.R. dated 25th April, 1988, which makes it clear that the amount payable is HRA plus 10% of their existing pay plus compensatory local allowance and this has been made applicable to the teaching staff. All that is mentioned therein is that those who have not been granted ad hoc increment of 20% of the basic pay that should not be taken into consideration. In our opinion reading Government Resolution dated 1st February, 1996 makes it clear that what is applicable is G.R. dated 25-4-1988 and G..R. dated 5th February, 1990 together with modifications. If that is so, then the HRA payable to such College Principals would be the HRA plus 10% of the admissible allowances as set out earlier. This does not confer power to pay less than what they were entitled to under the G.Rs. Apart from that after making the scheme applicable

to the teaching and non-teaching staff including Principals the Government cannot create two classes without showing some intelligible differentia. If that be done the same would amount be discretionary and in violation of Article 14 of the Continuation of India.

11. In our opinion, therefore, the action of the respondents in seeking to deduct the amount of HRA already paid is not in terms of the Government G.Rs., and consequently the petition will have to be made absolute in terms of prayer clauses (a), (b) and (c).

. In the light of the above Petition made absolute in terms of prayer clauses (a), (b) and (c). The respondents in so far as deductions are made are directed to refund the same to the Principals so entitled to. In the circumstances of the case there shall be no order as to costs.

(F.I.REBELLO, J.)

(MRS.R.S. DALVI, J.)